IN THE HIGH COURT OF JUDICATAURE FOR RAJASTHAN AT JODHPUR.

JUDGMENT.

(1) S.B. Civil Sales Tax Revision Petition No.216/2002
M/s Udaipur Dugdh Utpadak Sahakari Sangh Ltd. vs. The Commercial Taxes Officer , Udaipur

(2) S.B. Civil Sales Tax Revision Petition No.217/2002
M/s Udaipur Dugdh Utpadak Sahakari Sangh Ltd. vs. The Commercial Taxes Officer , Udaipur

(3) S.B. Civil Sales Tax Revision Petition No.345/2003
M/s Udaipur Dugdh Utpadak Sahakari Sangh Ltd. vs. The Commercial Taxes Officer , Udaipur

(4) S.B. Civil Sales Tax Revision Petition No.346/2003
M/s Udaipur Dugdh Utpadak Sahakari Sangh Ltd. vs. The Commercial Taxes Officer , Udaipur

(5) S.B. Civil Sales Tax Revision Petition No.347/2003
M/s Udaipur Dugdh Utpadak Sahakari Sangh Ltd. vs. The Commercial Taxes Officer , Udaipur

Date of Judgment: February 22,2007.

PRESENT.
HON'BLE MR. PRAKASH TATIA, J.

Mr. Anjay Kothari and Mr. Niraj Jain for the petitioner.
Mr. Sangeet Lodha for the non-petitioner.

BY THE COURT:

Since in all these five revisions petition, common question of law is involved, therefore, they are being heard and decided by this common judgment.

The petitioner is Cooperative Society and is engaged in the manufacturing and sale of the milk, skimmed milk and other milk products. The petitioner is registered under the Rajasthan Sales Tax law in the State of Rajasthan. The petitioner purchased skimmed milk powder from the registered dealers in the State of Rajasthan against the declaration Form ST-17 at concessional rate of tax @ 3%. According to the petitioner, said skimmed milk powder is used in fresh milk in the process of pasteurization to make the milk standardized as per the rules under the Prevention of Food Adulteration Act. The petitioner claimed that since the skimmed milk powder is used in process of manufacturing as raw material as defined under section 2(m) of the Rajasthan Sales Tax Act, 1954, therefore, the petitioner is entitled to pay the only concessional rate of tax as provided under Section 5-C of the Rajasthan Sales Tax Act, 1954.

The contention of the petitioner was not accepted by the Assessing Authority. The contention of the revenue is that bringing into existence milk of different fat contents, does not bring into existence in different commercial commodity so as to treat skimmed milk as raw material. The Assessing Authority, therefore, held that the assessee is liable to pay tax in residuary entry @ 10% and not @ 3%. The five assessment orders were passed for five different years, which are 1992-93, 1993-94, 1994-95, 1995-96 and 1996-97. All the five assessment

orders were challenged by preferring appeals before the Deputy Commissioner(Appeals), Commercial Taxes, Udaipur vide separate orders. The assessee preferred further appeals before the Rajasthan Tax Board, Ajmer which also stand dismissed by the separate orders dated 3.11.2001 and 31.10.2002 by the Rajasthan Tax Board,Ajmer. Hence these five revision petitions.

The learned counsel for the petitioner vehemently submitted that now the controversy stands settled by the Division Bench judgment of this Court delivered in the case of M/s Paschimi Raj. Dugdh Utmpadak Sahakari Sangh Ltd. vs. State of Rajasthan & ors. reported in (2003) 7 Tax Up-Date page 235. According to the learned counsel for the petitioner, irrespective of the fact whether skimmed milk is raw material or a commodity or a material used in the manufacturing of milk, the petitioner is entitled to benefit of concessional rate of tax. The learned counsel for the petitioner submitted that it is true that the petitioner claimed the benefit of tax concession under Section 5C of the Rajasthan Sales Tax Act, 1954 and claimed that the skimmed milk is raw material for producing milk and claimed that he is liable to pay tax only @ 3% but in view of the Division Bench judgment of this Court, the petitioner's case falls within the Section 5CC of the Act of 1954 so far as the cases are in relation to the assessments prior to 1.10.1994, in view of the fact that the Act of 1954 was amended in the year 1994, but in

the amended Act of 1994, the same provisions have been made as Section 10(1) for Section 5C of the old Act of 1954 and Section 10(3) equivalent to Section 5CC of the Act of 1954.

The learned counsel for the revenue Shri Sangeet Lodha vehemently submitted that the petitioner's case is not covered by the Division Bench judgment of this Court because of the plain and simple reason that it was never the case of the petitioner that he is entitled to benefit of levy of concessional tax under Section 5CC or under Section10 (3) of the Act of 1954 or the Act of 1994 respectively. According to the learned counsel for the non-petitioner, for availing the benefit of the tax concession, one is required to fulfill all the conditions, required for grant of such benefit. According to the learned counsel for the non-petitioner, as per Section 5-CC of the Act of 1954, normal rate of tax is provided under the Act and the concessional rate of tax is exceptional rate of tax. As per Section 5CC, the dealer selling goods, is required to obtain a certificate of registration of the registered dealer purchasing the goods required by him for use in manufacturing or processing the goods for sale and that certificate must specifically contains the name of the good which he intends to use as raw material or other than raw material for use in manufacturing or processing of the goods for sale. The dealer is further required to furnish prescribed authority in prescribed manner a declaration duly attested and signed by the

registered dealer to whom the goods are sold containing the prescribed particulars in the prescribed form obtained from the prescribed authority. According to the learned counsel for the revenue, the petitioner never sought any benefit of levy of concessional rate of tax under Section 5CC or 10(3) of the Act of 1954 or the Act of 1994 respectively. Not only above but in fact it is clear from the certificate of registration produced by the assessee in the present revisions that the skimmed milk has not been shown as other raw material or as goods other than raw material required by the dealer for use in the manufacturing or processing of goods for sale. Contrary to it, the assessee itself submitted form 17-A. Before all the three authorities, there was specific case of the assessee that his case falls under Section 5CC (for the subsequent year 1994, Section 10(3) and in view of the Division Bench judgment, now it is settled that the skimmed milk is not good used for manufacturing of different commodity and, therefore, there was no illegality in the order passed by the authorities and the Tax Board.

The learned counsel for the non-petitioner further vehemently submitted that the petitioner, all of sudden, has raised new question of fact before this Court in the revision petitions, stating that the petitioner's case falls under Section 5CC (new Section10(3)) and this new question is dependent on question of fact whether goods were in fact

used in the manufacturing or processing of goods for sale. The learned counsel for the non-petitioner emphatically submitted that in any case the benefit of charging of concessional rate of tax cannot be extended to the person who has no valid certificate for availing the tax benefit and in this case, since the certificate itself contains no mention of the skimmed milk anywhere, therefore, the assessee is not entitled to any benefit of concessional rate of tax.

The learned counsel for the petitioner, to counter the argument of the learned counsel for the revenue, vehemently submitted that the copy of the certificate of registration produced by the petitioner clearly discloses that at S.No.6, the assessee has disclosed the milk as the commodity to be used for manufacturing of the milk and milk product. At S.No. 6, the assessee mentioned the milk, Chemical etc. It is also submitted that skimmed milk is a milk and, therefore, the skimmed milk is disclosed in the certificate of registration. Otherwise, the certificate contains milk, chemical etc. That means that a wider certificate has been given to the assessee and if the assessee has used the skimmed milk as required by the provisions of the Prevention of Food Adulteration Act then the assessee cannot be denied the benefit of Section 5CC. It is also submitted that even if the item which has been used by the assessee for manufacturing of the goods has been mentioned under wrong column even then that can be read in right category, namely

under column-7.

I considered the submissions of the learned counsel for the parties and perused the judgment of the Division Bench of this Court delivered in the case of M/s Paschimi Raj. Dugdh Utpadak Sahakari Sangh Ltd. vs. State of Rajasthan and another (2003 Tax Up-date Vol.7 Pat.6 235). In view of the decision of the Division Bench of this Court in the case of M/s Paschimi Raj. Dugdh Utpadak Sahakari Sangh Ltd. (supra), I need not to refer all judgments which were relied upon by the learned counsel for the parties because of the reason that the case of M/s Paschimi Raj. Dugdh Utpadak Sahakari Sangh Ltd. was decided by the Tax Board following the decision given in the present case, i.e. given in the case of M/s Udaipur Dugdh Utpadak Sahakari Sang vs. The Commercial Taxes Officer, Udaipur in Appeals No.826/98 and 405/99 which are under challenge in S.B.Civil Sales Tax Revision No.216/2002 and 217/2002 and because of the reason that the Division Bench considered the controversy with reference to the Rajasthan Sales Tax Act, 1954 as well as with reference to the provisions of the Rajasthan Sales Tax Act, 1994 both. In the M/s Paschimi Raj. Dugdh Utpadak Sahakari Sangh Ltd., the contention of the assessee was that by applying the processing of mixing skimmed milk with natural milk not only milk with different fat contents are brought into existence which are commercially different products than natural milk. He is also

manufacturing other milk products like curd, butter milk, butter or Ghee, which in no sense could be said to be commercially same as milk. Even if it is held that bringing into existence of milk of different fate contents, does not amount to manufacture, even then under Section 10 (3), the goods used for processing the goods for sale and which does not fall in the category of raw material for manufacturing, the purchase tax cannot be levied exceeding 4%. The contention of the assessee, therefore, was of two folds; one that so far as use of skimmed milk for manufacturing curd, butter milk, butter or ghee, the skimmed milk is raw material and the use of skimmed milk for preparation of milk of different fat contents, the skimmed milk is used for processing the goods for sale and in either case, the tax cannot be levied, exceeding 4%. The contention of the revenue was that bringing into existence the milk of different fat contents, does not bring into existence any different commercial commodity so as to treat skimmed milk as raw material. It was also submitted by the revenue that concession under Section 10 cannot be availed only on preserving activity independent of manufacturing activity and, therefore, the assessee's other contention also cannot be accepted. It was further submitted that the skimmed milk is not used directly in manufacturing of curd, lassi, butter and ghee and, therefore, for manufacturing of milk product, milk is raw material but not the skimmed milk. The skimmed milk looses its identity as raw

material as soon intermediary product milk is brought into existence for further processing.

The Division Bench of this Court considered the Section 2(27) of the Rajasthan Sales Tax Act, 1994 and also noticed the departure from the definition of 'manufacture' as given in the Act of 1954 by enacting the provisions in the Act of 1994. The Division Bench held that the definition under the Act of 1954 is vide enough to cover the processing of goods. The Division Bench also held that the distinction is clear and in the Act of 1954, the emphasis was on process of goods and every process was included in the definition of 'manufacture' whereas definition in the Act of 1994 is restricted to only such processes which bring into existence of commercially different and distinct commodity, that can be treated as manufacture for the purpose of the Act. The Division Bench also considered Section 10 of the Act of 1994 in detail with reference to Section 5-C of the Act of 1954.The facts make it clear that in the case of M/s Paschimi Raj. Dugdh Utpadak Sahakari Sangh Ltd. also, the benefit was claimed by the assessee of tax exemption by furnishing form ST-17 with specific plea that skimmed milk is raw material. The Division Bench in above case held that "..... so far as use of skimmed milk powder for processing the natural milk to standardize its fat contents at different levels and selling the milk of varied form at different price may not amount to manufacture, as even after the processing, the commodity

commercially known for marketing remains the same, viz. Milk ..... .” In the present case we are not concerned with the issue with respect to the use of skimmed milk for bringing into existence other milk product like ghee, lassi etc., for which the Division Bench held that the skimmed milk is raw material. The Division Bench specifically held as under:-

> “Thus, the statutory policy is clear that the concessional rates are applicable not only to the purchase of raw materials used in manufacture of goods but also on purchase of articles other than raw materials used in processing of goods for sale as well as for manufacturing of goods which may otherwise not qualify as raw material.”

and, thereafter, the Division Bench of this Court held as under:-

> “Therefore, in a given case, even if the articles purchased by an assessee are not used as manufacture as raw materials but are used by him for processing the goods for sale, it cannot be subjected to tax exceeding 4% in view of sub-sec.(3) of Sec.10 of the Act, 1994.”

In view of the above reasons, the skimmed milk may not be raw material when it is used for making a milk of different standard having different contents but still the tax liability can be not exceeding 4%.

The contention of the learned counsel for the non-petitioner that the skimmed milk has not been shown as raw material in the Registration Certificate of the assessee or that the assessee has

submitted wrong declaration and has not used the commodity for the purpose for which it was purchased, under in the declaration given in form ST-17 are concerned, they in fact are not arising in the present controversy because that was not the issue before the Assessing Authority or the Deputy Commissioner(Appeals) or before the Tax Board.

In view of the above discussions, all the five revision petitions are allowed. The impugned orders of the Tax Board so far as they relate to levy of tax on purchase of skimmed milk powder exceeding 4%, are set aside in all the five cases and the Assessing Authority is directed to make fresh assessment order in accordance with law in the light of the above principle.

(PRAKASH TATIA),J.

mlt.